IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 29 of 2006
In
COMPANY APPLICATION No. 77 of 2006
With
COMPANY PETITION No. 30 of 2006
In
COMPANY APPLICATION No. 78 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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WEST INN LTD. - Petitioner(s)
Versus
... - Respondent(s)

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Appearance :
MR SAURABH SOPARKAR for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/05/2007

COMMON ORAL JUDGMENT

1. Both these Company Petitions are filed by the

respective petitioner companies for sanction of the scheme of amalgamation of Paronama Builders Private Limited (tansferor company) with West Inn Limited (transferee company) under Section 391 r.w. Section 394 of the Companies Act; 1956.

2. It has been submitted that the transferor company is a private limited company whereas the transferee company is a closely held public limited company. Both the petitioner companies belong to the same group of management. The transferor company was originally promoted in the year 2000, with the object of developing the real estate, however, due to slackness in the real estate market, the company started trading activity for supply of essential commodities to hotels. The transferee company, on the other hand, has been promoted with the object of starting a hotel. The company has made tie up with Fortune Park Hotels Limited, a wholly owned subsidiary of ITC Hotels Limited for operation and marketing of a hotel at Ahmedabad. It has been submitted that the transferee company is a profit making company at present. It has been

further submitted that since both the companies belong to the same group of management and the business activities are complementary, the Board of Directors of these companies thought it fit to amalgamate these companies for achieving synergic advantages. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies.

3. It is further submitted that having procured and produced written approval of all the equity shareholders of the transferee company, vide order passed by this Court dated 28.2.2006 passed in Company Application No.77 of 2006, meeting of the equity shareholders of the transferee company in relation to the proposed scheme of amalgamation as required under Section 391 of the Companies Act, 1956 was dispensed with. It is further submitted that similarly they have procured and produced the written consent of all the equity shareholders and unsecured loan creditors of the transferor company and there being no secured creditors and no unsecured creditors of the transferor

company, the meeting of the equity shareholders and the unsecured loan creditors of the transferor company to approve the proposed scheme of amalgamation was dispensed with vide order dated 28.2.2006 passed by this Court passed in Company Application No. 78 of 2006.

4. After the petitions were admitted, the same were duly advertised in the newspapers (Indian Express and Loksatta – Jansatta Ahmedabad edition dtd. 31.3.2006) and the publication in the Government Gazette was dispensed with as directed in the orders dated 14.3.2006. The affidavits dated 12.5.2006 have been filed which confirms the said publications. Pursuant to the said publications no one has come forward with any objections to the said petitions.

5. Notice of the petition of the transferee company has been served upon the Central Government and a copy of the letter from the office of the Regional Director, Western Region, dated 12.9.2006 indicating that the Central Government has no objection to the proposed scheme and has

left the matter to be decided by this Court on its merits is placed on record.

6. Notice of the petition of the transferor company was served upon the Official Liquidator attached to the Gujarat High Court. The Official Liquidator has filed his report dated 23.11.2006 (at page 35 to 39 of the Company Petition No. 30 of 2006) and has placed with it the detailed report filed by the Chartered Accountant appointed by him for the purpose (from page 40 onwards). It appears that the said Chartered Accountant has made adverse remarks with regard to the affairs of the transferor company and has concluded that the same have been conducted against the public interest. A detailed affidavit dated 19.3.2007 is filed by Shri Avinash Gupta, one of the Directors of the transferor company giving explanations with regard to various issues raised by the said Chartered Accountant. It is submitted in the said affidavit that the objections in the nature sought to be raised by the Official Liquidator do not fall within the purview of second proviso

to Section 394 (1) of the Companies Act, 1956. It is further submitted that various alleged acts of commission and omission even if taken singularly or jointly do not constitute and do not lead to the conclusion that the affairs of the company have been conducted in a manner prejudicial to the interest of the members or to the public interest. In the said affidavit the transferor company has dealt with all the observations made in the report of the Chartered Accountant in detail (para 8 of the said affidavit). The said affidavit affirms that the affairs of the company are not conducted against the interest of its members or against the public interest and that such conclusion is errorneous on the part of the said Chartered Accountant.

7. I have heard Shri Saurabh Soparkar, learned Senior Advocate for the petitioner companies. It has been submitted by Shri Soparkar that the contention taken by the Chartered Accountant pertaining to various acts of commission and omission by the transferor company are factually

incorrect, presumptuous and at any rate not material to the proposed scheme of amalgamation and the same do not lead to the conclusion that the affairs of the company are conducted in a manner prejudicial to the interest of its members or the public interest. He has further submitted that the contentions pertaining to the payments made by the company to Shri N.H. Tekwani or M/s. Virani Assotiates without deducting the relevant taxes and its impact on the tax liabilities of the respective parties are presumptuous. The company has denied its liability to deduct such taxes. It has been further contended that the same are of no consequence so far as the transferor company is concerned. Shri Soparkar has further submitted that the said Chartered Accountant has errorneously assumed that appropriate proceedings are required to be taken against the said company by the Reistrar of Companies for various improprieties. The report filed on behalf of the Registrar of Companies makes it clear that the said office has not found anything objectionable to the proposed scheme. It has been further submitted by Shri Soparkar

that even if such proceedings are initiated by the Registrar of Companies, the present scheme in no way comes in the way of such proceedings, if any. No exemption is sought either by the company or any of its directors from such proceedings under the scheme and therefore, the sanction of the proposed scheme is not going to cause any prejudice to the public interest. In support of his submission, he has relied upon decisions of this Court in the matter of ***Ratnamani Engineering Limited [1999 (033) CLA 0358]*** and ***Arvind Mills Limited [111 Co. Cases 118]*** whereby it has been observed that the order of amalgamation will not absolve the transferor company or its directors or employees from the liability, if any, for breach of any law which might have been committed before the order of amalgamation. In view of this, it is submitted that the present scheme too deserves to be sanctioned with this clarification, if so required.

8. Having gone through the petitions and submissions, I am of the opinion that the

contentions raised by the Official Liquidator based on the report of the Chartered Accountant appointed by him, with regard to the affairs of the company being prejudicial to public interest are not relevant and therefore, not required to be considered. Even if it be presumed, though it is seriously disputed by the petitioner companies, that what is stated by the said Chartered Accountant is correct, the same cannot lead me to a conclusion that the affairs of the company have been conducted in a manner prejudicial to the interest of the companies, their members or public interest. At any rate the present proceedings can not absolve the said companies or their directions from any action that may be taken against them for any act of commission or omission on their part. A similar view has been taken by this Court in the case of ***Ratnamani Engineering Limited*** (supra) and ***Arvind Mills Limited*** (supra) whereby it has been observed that the order of amalgamation will not absolve the transferor company or its directors or employees from the liability, if any, for breach of any law which might have been

committed before the order of amalgamation of accordingly subject to a clarification that the present order of sanctioning the scheme of amalgamation will not absolve the transferor company or its directors or employees from the liability, if any, for breach of any law which might have been committed before the order of amalgamation, I hereby sanction the scheme. Prayers in terms of paragraph – 15(a) of the Company Petition No. 29 of 2006 and paragraph – 15(a) of the Company Petition No. 30 of 2006 are hereby granted.

9. The petitions are disposed of accordingly. It is observed while disposing of the present Company Petitions that normally this Court awards costs to be paid to the Central Government Standing Counsel, however, in view of the fact that the learned Central Government Standing Counsel, Shri P.J.Malkan, has not assisted the Court and has not appeared at the time of final hearing of the present petitions, this Court does not award any costs to be paid to the Central Government Standing Counsel.

[M.R.Shah, J.]

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